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Attorneys for Defendants COUNTY OF LOS ANGELES and LEROY D. BACA

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

ANTHONY BROWN,
Plaintiff,
v.

COUNTY OF LOS ANGELES,
SHERIFF LEROY D. BACA,
UNDERSHERIFF PAUL TANAKA,
CAPTAIN WILLIAM CAREY,
LIEUTENANT GREGORY
THOMPSON, LIEUTENANT
STEPHEN LEAVINS, SERGEANT
SCOTT CRAIG, SERGEANT
MARCIELLA LONG, DEPUTY
GERARD SMITH, DEPUTY MICKEY
MANZO, DEPUTY JAMES SEXTON,
individually and in their official
capacities, and DOES 1 through 10,
inclusive.

Defendants.

CASE NO. CV15-02162 DDP (E)
[Assigned to Judge Charles F. Eick
Courtroom "750"]

**DEFENDANTS, COUNTY OF LOS
ANGELES AND LEROY D. BACA'S
NOTICE OF MOTION AND
MOTION FOR LEAVE TO TAKE
ORAL DEPOSITION OF
PLAINTIFF; MEMORANDUM OF
POINTS AND AUTHORITIES;
DECLARATION OF THOMAS C.
HURRELL, ESQ.**

[File Concurrently with [Proposed] Order]

**Date: May 28, 2021
Time: 9:30 a.m.
Courtroom: 750**

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1 **TO THE HONORABLE COURT AND ALL PARTIES AND THEIR**
2 **ATTORNEYS OF RECORD HEREIN:**

3 **PLEASE TAKE NOTICE** that DEFENDANTS, COUNTY OF LOS
4 ANGELES AND LEROY D. BACA, by and through their counsel of record, hereby
5 move to this Honorable Court for an Order granting leave to take the deposition of
6 plaintiff, ANTHONY BROWN pursuant to F.R.C.P 30(a)(2)(B).

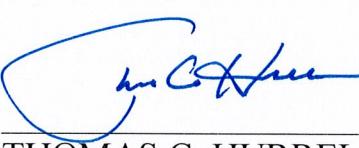
7 Plaintiff is currently incarcerated in Mule Creek State Prison and his
8 deposition is tentatively scheduled for **June 10, 2021 at 11:00 a.m.** via
9 videoconference or some other remote means. This date has been held by Litigation
10 Coordinator, Donna Rock, at Mule Creek State Prison.

11 This Motion is based upon this Notice of Motion, the grounds stated in the
12 motion and the attached Memorandum of Points and Authorities in support thereof,
13 the attached Declaration of Thomas C. Hurrell, Esq. ("Hurrell Decl."), all pleadings,
14 records on file herein, all matters of which the Court may take judicial notice, and
15 upon such oral and documentary evidence as may be presented at the hearing on this
16 Application, should the court order such a hearing.

17 This motion is exempt from the conference of counsel under Local Rule 7-3
18 as the plaintiff is appearing *in propria persona*.

19 DATED: April 23, 2021

HURRELL CANTRALL LLP

21 By: 

22 THOMAS C. HURRELL
23 Attorneys for Defendants COUNTY OF
24 LOS ANGELES and LEROY D. BACA

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

A. Factual Background.

4 This matter arises out of Plaintiff, ANTHONY BROWN's allegations that
5 while he was in custody of the Los Angeles County Sheriff's Department in August
6 and September 2011, defendants violated his constitutional rights. Specifically, he
7 alleges that while he was housed at the Los Angeles County jail facilities, the
8 defendants became aware he was an informant for the FBI in its investigation into
9 corruption and abuse, and in an effort to conceal him from the FBI, the defendants
10 allegedly isolated, covertly transferred him throughout the jail system, and changed
11 his identity. Plaintiff claims that in doing so, the defendants acted with deliberate
12 indifference, deprived him of necessary medical care, and subjected him to
13 excessive force.

B. Procedural Background.

15 Plaintiff filed his Complaint in the instant matter on March 24, 2015. His
16 Complaint alleges six claims for relief, including (1) violation of the Eighth
17 Amendment against cruel and unusual punishment under 42 U.S.C. § 1983, (2)
18 municipal and supervisory liability under 42 U.S.C. § 1983, (3) failure to provide
19 medical care under 42 U.S.C. § 1983, (4) violation of the First Amendment under 42
20 U.S.C. § 1983, (5) violation of the Rehabilitation Act of 1973 under 29 U.S.C. § 701
21 et seq., and (6) civil conspiracy under 42 U.S.C. § 1983.

22 This matter was stayed between June 17, 2015 to June 2, 2016, pending the
23 resolution of two related criminal matters filed against defendants former
24 UNDERSHERIFF PAUL TANAKA and CAPTAIN WILLIAM CAREY in the case
25 entitled *United States of America v. Tanaka, et al.*, Case No. CR15-0255, in the
26 United States District Court for the Central District of California.

27 On January 11, 2017, Defendants jointly filed a Motion for Judgment on the
28 Pleadings contesting Plaintiff's time-barred claims outside the applicable California

1 limitations period. (See ECF No. 55.) On January 29, 2019, the District Court (Hon.
2 Dean D. Pregerson) adopted the Magistrate Judge's Report and Recommendation,
3 and Judgment dismissing the case with prejudice was entered on the same day. (See
4 ECF Nos. 90, 91.) On February 19, 2019, Plaintiff filed an appeal, and on March
5 15, 2019, an Order on Motion for Leave to Appeal was granted. (See ECF No. 95.)

6 On November 25, 2020, the Ninth Circuit Court of Appeal reversed the
7 defense judgment and remanded the case. (See U.S. Court of Appeals for the Ninth
8 Circuit Case No. 19-55218, Dkt. No. 81-1.) On December 9, 2020, Defendants
9 jointly petitioned seeking a rehearing of the panel's decision reversing the Ninth
10 Circuit judgment against Plaintiff-Appellant. (See *id.*, Dkt. 82.) It was not until
11 January 26, 2021 when the petition for panel rehearing or rehearing en banc was
12 denied. (See *id.*, Dkt. 84.) On February 3, 2021, the formal mandate was issued by
13 the Ninth Circuit pursuant to Rule 41(a) of the Federal Rules of Appellate
14 Procedure. (See *id.*, Dkt. 85, ECF No. 103.)

15 On February 5, 2021, the present matter was reassigned to Magistrate Judge
16 Hon. Charles F. Eick. (See ECF No. 104.) On March 22, 2021, a scheduling order
17 was entered regarding discovery cut-off dates and dates for filing motions. (See ECF
18 No. 117.)

19 On April 23, 2021, Defendants filed a Joint Application to Modify the
20 Scheduling Order and Extend the discovery cut-off dates and dates for filing
21 motions. (See ECF No. 119.) This Application is currently pending before the
22 Court.

23 **C. Relief Requested.**

24 Defendants, County of Los Angeles and Leroy D. Baca, seek to take
25 Plaintiff's deposition on June 10, 2021 via videoconference. However, given that
26 Plaintiff is incarcerated in Mule Creek State Prison, Defendants must seek leave of
27 court pursuant to Federal Rules of Civil Procedure 30(2)(B).

28 To date, Plaintiff is proceeding *in propria persona*. However, Defendants'

1 counsel, Thomas C. Hurrell has been informed by Stewart Miller, Plaintiff's Ninth
 2 Circuit attorney for the underlying action, that plaintiff is presently in the process of
 3 assembling a team of attorneys to represent him in the present action. (Hurrell Decl.
 4 ¶ 3.) One of his prospective attorneys, Paul Kiesel, who has contacted Mr. Hurrell
 5 to discuss this matter, is aware that Defendants wish to take Plaintiff's deposition.
 6 (*Id.* ¶ 4.)

7 In fact, Mr. Kiesel advised that Donna Rock, Litigation Coordinator at Mule
 8 Creek State Prison, would assist with the scheduling of Plaintiff's deposition, but she
 9 cannot proceed until there is a court order for same. (*Id.*) On April 23, 2021,
 10 Defendants' counsel's office spoke with Donna Rock via telephone conference to
 11 discuss potential deposition dates for Plaintiff. (*Id.*) Given that there is a mediation
 12 scheduled in this matter for June 15, 2021, the earliest available date that
 13 Defendants could depose plaintiff is June 10, 2021. (*Id.* ¶ 5.) The tentative
 14 deposition date of June 10, 2021 will only proceed if this Court grants Defendants'
 15 Order seeking leave to take Plaintiff's deposition. (*Id.*)

16 **II. THE COURT SHOULD GRANT LEAVE TO DEPOSE PLAINTIFF**
 17 **WHO IS IN CUSTODY**

18 Federal Rules of Civil Procedure 30(2)(B) provides that a party must obtain
 19 leave of court, which shall be granted to the extent consistent with the principles
 20 stated in Rule 26(b)(2), if the person to be deposed is in prison. *Fed. R. Civ. P.*
 21 30(a)(2)(B). As discussed below, the circumstances of this case satisfy the
 22 standards of Rule 30(a)(2)(B).

23 Granting leave to take the deposition of Plaintiff would fully comport with
 24 Rule 26(b)(2) . *Fed. R. Civ. P.* 26(b)(2). Plaintiff's testimony will be essential to a
 25 fair adjudication of the underlying action. Plaintiff has not been deposed yet and his
 26 deposition is undoubtedly germane to the issues in this case. Mr. Brown is not only
 27 a plaintiff in the underlying action, but is also a witness with personal knowledge of
 28 the pertinent facts that are crucial to defendants' defenses. Plaintiff's testimony is

1 extremely important to assess the viability of his claims, and thereafter, prepare for
2 the June 15, 2021 mediation in this matter. Defendants have brought the instant
3 motion to ensure that the plaintiff's deposition is taken in a timely fashion to allow
4 defendants to obtain necessary information in order to participate in a meaningful
5 mediation and adequately prepare for trial.

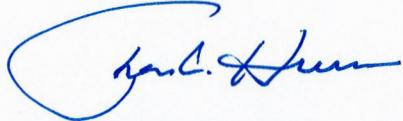
6 In order to ensure that Plaintiff's deposition will go forward in a timely
7 manner and in a manner conducive to the convenience of the prison authorities and
8 the parties in this action, defendants request that the Court grant this Motion for
9 leave to take plaintiff's deposition.

10 **III. CONCLUSION**

11 For these reasons set forth above, Defendants respectfully request that the
12 Court grant leave to take the deposition of Plaintiff, Anthony Brown, who is
13 incarcerated and appearing in the underlying action *in propria persona*, and that it
14 take place in Mule Creek State Prison via videoconference on June 10, 2021, or any
15 other date that is convenient with all parties in this matter.

16 DATED: April 23, 2021

HURRELL CANTRALL LLP

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18 By: 
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20 THOMAS C. HURRELL
21 Attorneys for Defendants COUNTY OF
22 LOS ANGELES and LEROY D. BACA
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DECLARATION OF THOMAS C. HURRELL

1 I, Thomas C. Hurrell, declare:

2 1. I am an attorney duly licensed to practice before this Court and am a
3 partner of Hurrell Cantrall LLP, attorneys of record for defendants COUNTY OF
4 LOS ANGELES and LEROY D. BACA herein. The facts set forth herein are of my
5 own personal knowledge and if sworn I could and would testify competently
6 thereto.

7 2. I make this declaration on behalf of defendants COUNTY OF LOS
8 ANGELES and SHERIFF LEROY D. BACA in support of their Motion Seeking
9 Leave to Depose Plaintiff, Anthony Brown who is confined in prison.

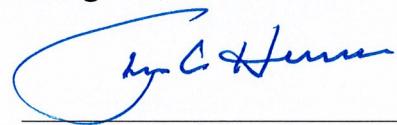
10 3. To date, Plaintiff is proceeding *in propria persona*. However,
11 Defendants' counsel, Thomas C. Hurrell has been informed by Stewart Miller,
12 Plaintiff's Ninth Circuit attorney for the underlying action, that plaintiff is presently
13 in the process of assembling a team of attorneys to represent him in the present
14 action.

15 4. One of his prospective attorneys, Paul Kiesel, who has contacted Mr.
16 Hurrell to discuss this matter, is aware that Defendants wish to take Plaintiff's
17 deposition. In fact, Mr. Kiesel advised that Donna Rock, Litigation Coordinator at
18 Mule Creek State Prison, would assist with the scheduling of Plaintiff's deposition,
19 but she cannot proceed until there is a court order for same. On April 23, 2021,
20 Defendants' counsel's office spoke with Donna Rock via telephone conference to
21 discuss potential deposition dates for Plaintiff.

22 5. Given that there is a mediation scheduled in this matter for June 15,
23 2021, the earliest available date that Defendants could depose plaintiff is June 10,
24 2021. The tentative deposition date of June 10, 2021 will only proceed if this Court
25 grants Defendants' Order seeking leave to take Plaintiff's deposition.

26 I declare under penalty of perjury under the laws of the United States of
27 America that the foregoing is true and correct.

1 Executed on April 23, 2021, at Los Angeles, California.
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Thomas C. Hurrell

HURRELL CANTRALL LLP
300 SOUTH GRAND AVENUE, SUITE 1300
LOS ANGELES, CALIFORNIA 90071
TELEPHONE (213) 426-2000

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 300 South Grand Avenue, Suite 1300, Los Angeles, California 90071.

On April 26, 2021, I served true copies of the following document(s) described as **DEFENDANTS, COUNTY OF LOS ANGELES AND LEROY D. BACA'S NOTICE OF MOTION AND MOTION FOR LEAVE TO TAKE ORAL DEPOSITION OF PLAINTIFF; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF THOMAS C. HURRELL, ESQ.**, on the interested parties in this action as follows:

Anthony Brown
CDC V-79273
Facility C - 15 - Cell 216
Mule Creek State Prison
P.O. Box 409060
Ione, CA 95640

Plaintiff in Pro Se

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Hurrell Cantrall's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on April 26, 2021, at Los Angeles, California.



Edilma Olivares